

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

UNITED STATES OF AMERICA,

)

Plaintiff.

2:08-cr-0181-HDM-LRL

ALXAVIER WOODS.

ORDER

Defendant.

11

Before the court is defendant's Motion to Dismiss Indictment Based Upon Prosecutorial Delay, or in the Alternative, For Release of the Defendant on Pretrial Conditions (#18). The court has also considered the government's Response (#21), and defendant's Reply (#22). Defendant no longer moves for dismissal, asking the court only for pretrial release. Reply (#22) at 2. For the following reasons, the motion will be denied.

BACKGROUND

Defendant Alxavier Woods (“Woods”) is under indictment on one count of Felon in Possession of a Firearm, a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and three counts of Possession with Intent to Distribute a Controlled Substance, violations of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and (b)(1)(B)(iii). Indictment (#1). Woods made his initial appearance in this case on June 27, 2008. He was arraigned and entered pleas of not guilty to all charges, and trial was scheduled for August 26, 2008. The government moved for pretrial detention on the ground that Woods was a danger to the community. Min. (#9). Following the proffers and arguments of counsel, and after weighing the factors enumerated under the Bail Reform Act, 18 U.S.C. § 3142(g), the court detained Woods pending trial. Specifically,

1 the court found the following:

2 Defendant is not only charged with a drug-related type of offense and
 3 Felon in Possession of [a] Firearm in this case, but looking at his
 4 criminal history, the defendant has been convicted of four Felonies-two
 5 of which are for drug related offenses, one of which is for a crime of
 6 violence, and another for Grand Larceny Auto. In addition, there is a
 7 presumption because there are now more drug charges. He has an
 8 extensive felony record that dates back ten years and the most recent
 9 conviction [was] just two years ago.

10 Order (#14). On this basis the court found by clear and convincing evidence that Woods was a danger
 11 to the community and that no condition or combination of conditions of release would reasonably assure
 12 the safety of the community. *Id.* The parties agreed that this case would be governed by a Joint
 13 Discovery Agreement. *See* Min. (#8).¹ The standard Order Regarding Pretrial Procedure (#11) was
 14 entered.

15 On August 1, 2008, the parties filed a stipulation to continue the trial date. Stip. (#16); *see also*
 16 Stip. (#17). The reason for the continuance was that as of August 1, 2008—nearly five weeks after the
 17 arraignment and plea—Woods’ counsel was “awaiting discovery in this matter.” The stipulation also
 18 noted that Woods “does not object to the continuance.” *Id.* On August 5, 2008, Woods filed the instant
 19 Motion (#18). By Order (#20) dated August 6, 2008, the court approved the stipulation and continued
 20 the trial to October 21, 2008. The court found that the additional time needed for motion and trial
 21 preparation was excludable under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) and (B)(I) and (iv).
 22 The discovery materials were finally provided to Woods on August 12, 2008. Opp’n (#21) at 2 n.1.

20 ANALYSIS

21 Woods argues that the government’s failure to timely provide him with discovery, which
 22 necessitated the continuance of the trial, warrants his release from custody pending trial. Mot. (#18)

23
 24 ¹ LCR 16-1(b)(1)(ii) requires the parties to *file* the Joint Discovery Agreement. It must be filed not more than five
 25 days after arraignment. LCR 16-1(b)(1)(iv)(C) requires the government to disclose all materials required by federal statute,
 26 rule, or the Constitution within five days of filing the Joint Discovery Statement. All other government disclosures are to
 27 be made in accordance with the terms of the Joint Discovery Agreement. LCR 16-1(b)(1)(iv)(D). No Joint Discovery
 28 Agreement has been filed in this case. The parties are directed to file it forthwith.

1 at 3-4; *see also* Reply (#22) at 2-3. Recognizing that dismissal of the Indictment “would be too harsh”
2 a sanction for the government’s failure to timely meet its discovery obligations, Reply (#22) at 2, Woods
3 contends that a “more fitting” sanction would be to release him from custody pending trial. *Id.* He is
4 careful to note that his motion is not one to reopen the detention hearing based on new information.
5 Rather, the motion seeks release only as a sanction for government’s delay in providing discovery.

6 The court does not countenance undue delay in the provision of discovery materials. Because
7 the parties have not filed the Joint Discovery Agreement, the court is unaware of the specific disclosure
8 deadlines set forth in the Agreement. Nevertheless, the court is aware that typical Joint Discovery
9 Agreements require the government to disclose within *ten days* of the arraignment all materials whose
10 production is required under Fed.R.Crim.P. 16(a)(1)(A)-(F), all search warrants and related materials
11 that may be offered at trial, and all relevant investigative reports (except those relating to interviews of
12 prospective government witnesses). Hence, it is likely that the bulk of the discovery materials in this
13 case were to have been produced by July 7, 2008. They were not produced until August 12, 2008, more
14 than five weeks late. While the court recognizes that the delay in production was likely due to problems
15 associated with the post-indictment substitution of government counsel, the court expects the
16 government conscientiously to self-monitor its discovery obligations, especially when a defendant has
17 been detained pending trial.

18 Here, however, the court finds that the delay in production of discovery materials, and the
19 consequent delay in the trial date, was not so great as to warrant the requested sanction. The question
20 is whether Woods’ detention has been so prolonged as to constitute punishment without trial in violation
21 of the Due Process Clause of the Fifth Amendment. *See* U.S. Const. amend. V. In *United States v. Ailemen*, 165 F.R.D. 571 (N.D. Cal. 1996), the court focused on three factors in considering the due
22 process implications of pretrial detention: (1) the length of the expected delay; (2) the extent to which
23 the prosecution and/or the courts have been responsible for any unnecessary delays; and (3) the
24 magnitude of the threat to the government’s regulatory interests. *Id.* at 589. Evaluation of these factors
25 yields the conclusion that Woods’ detention does not offend the principles of due process.
26

1 **A. LENGTH OF EXPECTED DELAY**

2 Woods has been in federal custody on the current charges since late June, 2008. Trial is set to
 3 begin on October 21, 2008. No further continuances will be granted. *See Order (#20) at 3.* This case
 4 is not complex. If he is not released, Woods' pretrial detention would be approximately four months.
 5 Courts generally decline to entertain due process challenges to pretrial detention when the length of
 6 detention is as short as one year. *See, e.g., United States v. DiGiacomo*, 746 F. Supp. 1176, 1182 (D.
 7 Mass. 1990) (due process violation "has not yet occurred" in case where defendants already incarcerated
 8 for four (4) months and trial not expected to be completed for another year); *United States v. Colombo*,
 9 777 F.2d 96, 97-98, 100 (2d Cir. 1985) (due process determination "premature" where defendant
 10 detained seven (7) months at time of decision and expected to be detained thirteen (13) months to two
 11 (2) years before completion of trial). Clearly the anticipated length of pretrial delay in this case does
 12 not support a due process claim.

13 **B. RESPONSIBILITY FOR DELAY**

14 The government notes that it was Woods who sought to delay the trial. Woods responds, of
 15 course, that it was the government's failure to timely provide discovery that necessitated the request for
 16 a continuance. As noted, responsibility in this case for the delay in production of the discovery must
 17 ultimately fall on the government, notwithstanding that the delay was neither willful nor grossly
 18 negligent. Where a defendant is detained pending trial, the government's duty to provide discovery
 19 timely is all the more pressing.²

20 **C. MAGNITUDE OF THE THREAT TO THE GOVERNMENT'S REGULATORY INTERESTS**

21 "There are three regulatory interests that pretrial detention could serve: (1) protecting the

23 ² *See Ailemen*, 165 F.R.D. at 592-93 ("the government's obligation to expedite pretrial proceedings grows when
 24 the government has moved for detention pending trial") (citing *United States v. Salerno*, 794 F.2d 64, 79 n.2 (2d Cir. 1986)
 25 (Feinberg, C.J., dissenting on other grounds) ("Pretrial detention under any circumstances is an extraordinary remedy with
 26 serious due process implications. If the government seeks the benefit of that remedy it must exert itself to accelerate the date
 for a trial."), *rev'd*, 481 U.S. 739); *United States v. Jackson*, 823 F.2d 4, 8 ("when the government moves for pretrial
 detention it has an obligation to arrange for the trial as quickly as possible, using 'extraordinary means' if necessary")
 (quoting *Salerno*, 794 F.2d at 79 n.2).

1 integrity of the trial process (by, for example, preventing a defendant from attempting to intimidate
2 witnesses, jurors, or others involved in the prosecution), (2) preventing danger to the community, and
3 (3) assuring that the defendant is present for trial and, if convicted, for sentencing (the risk of flight
4 factor).” *Ailemen*, 165 F.R.D. at 595.

5 Here, analysis of the magnitude of the threat to the government’s interest in preventing danger
6 to the community supports detention. As far as can be discerned from the record before the court, the
7 government’s case on the merits appears strong. So too is the government’s showing of Woods’
8 dangerousness. The distribution of illegal narcotics (methamphetamine, cocaine and cocaine base, as
9 alleged here), without more, causes serious harm to society. “Drug [dealing] also creates additional real
10 dangers—through crimes committed by addicts seeking to support their habits, through plain human
11 suffering, and because people engaged in the sale of illegal substances sometimes commit or direct
12 violent crimes in furtherance of their enterprises.” *Ailemen*, 165 F.R.D. at 596. In the case at bar, for
13 example, Woods is charged with possessing a .45 caliber Norinco 1911A1 handgun, having previously
14 been convicted of a crime punishable by imprisonment for a term exceeding one (1) year. Indictment
15 (#1) at 1-2.

16 It is also relevant that prior to his incarceration, Woods used marijuana daily for most of his life,
17 PCP weekly for six (6) months, and occasionally used methamphetamine. He also indicated that he
18 consumed 750 ml of Hennessy liquor every day, in addition to “a few beers.” *Id.* Woods is charged
19 with drug-related offenses and Felon in Possession of Firearm in this case. Indictment (#1). He has
20 been convicted of four (4) felonies, two (2) of which were for drug-related offenses, one (1) of which
21 was for a crime of violence, and another for Grand Larceny Auto. Woods’ felony record dates back ten
22 (10) years, with his most recent conviction—Possession of a Controlled Substance—occurring
23 approximately two (2) years ago. *Id.* This evidence of persistent drug-related activity and violent
24 criminal behavior shows that Woods poses a danger not only to himself, but also to the community, and
25 that no conditions or combination of conditions will reasonably assure the safety of the community.

26 In view of the foregoing, the court concludes that Woods’ continued pretrial detention would

1 not violate his due process rights.

2 Accordingly, and for good cause shown,

3 IT IS ORDERED that defendant's Motion to Dismiss Indictment Based Upon Prosecutorial
4 Delay, or in the Alternative, for Release of the Defendant on Pretrial Conditions (#18) is DENIED.

5 DATED this 2nd day of September, 2008.



6
7 **LAWRENCE R. LEAVITT**
8 **UNITED STATES MAGISTRATE JUDGE**

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26